



APPENDIX.

IN THE
Supreme Court of the United States
OCTOBER TERM, 1978

No. 78-1870

WHIRLPOOL CORPORATION,

Petitioner,

vs.

RAY MARSHALL, SECRETARY OF LABOR,

Respondent.

**ON WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE SIXTH CIRCUIT.**

**PETITION FOR CERTIORARI FILED JUNE 19, 1979
CERTIORARI GRANTED OCTOBER 1, 1979.**

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APPENDIX.

CHRONOLOGICAL LIST OF RELEVANT DOCKET ENTRIES

<u>Date</u>	<u>Proceedings</u>
8-29-74	Complaint filed as Case No. C74 359, U. S. District Court for the Northern District of Ohio, Western Division.
10-21-74	Defendant's Answer filed.
10-22-75	Pretrial Order entered.
3-25-76	Cause called for trial. Trial held, concluded.
6-21-76	Opinion, Findings of Fact, Conclusions of Law entered. Judgment for Defendant. Case dismissed.
7-16-76	Notice of Appeal filed by Plaintiff.
7-29-76	Notice of Cross-Appeal filed by Defendant.
6-21-78	Oral Argument before Sixth Circuit.
7- 5-78	Order entered directing supplemental briefing.
2-22-79	Opinion and Order of Sixth Circuit Reversing District Court Order and Remanding Cause.
4- 4-79	Order of Sixth Circuit amending Opinion entered February 22, 1979.
4- 4-79	Petitions for Rehearing and Rehearing <i>En Banc</i> denied.
4-19-79	Order Staying Mandate issued.
6-19-79	Petition for Certiorari filed by Whirlpool Corporation.
10- 1-79	Order of Supreme Court granting Petition for Certiorari.

IN THE UNITED STATES DISTRICT COURT
For the Northern District of Ohio
Western Division

Peter J. Brennan, Secretary of Labor,
United States Department of Labor,

Plaintiff,

vs.

Whirlpool Corporation
(Marion Division),

Defendant.

Judge Don J. Young
Civil Action
No. C74 359

COMPLAINT

Plaintiff, Peter J. Brennan, Secretary of Labor, United States Department of Labor, brings this action for an injunction and other relief pursuant to his statutory authority to enforce the provisions of the Occupational Safety and Health Act of 1970 (84 Stat. 1590 *et seq.*; 29 U. S. C. § 651 *et seq.*), hereinafter called the Act.

I

Jurisdiction of this action is conferred upon the Court by Section 11(c)(2) of the Act (29 U. S. C. § 660(c)(2)).

II

Defendant Whirlpool Corporation has a place of business and manufacturing plant located in Marion, Ohio, within the jurisdiction of this Court, where it produces goods which are shipped outside Ohio, being thereby a business affecting commerce within the meaning of the Act.

III

On or about July 10, 1974, Virgil G. Deemer and Thomas A. Cornwell, employees of defendant, refused to perform work assignments at defendant's plant, on the ground that such assignments posed a danger to them of death or serious bodily harm. Defendant issued written reprimands and disciplinary suspensions to these employees.

IV

On July 15, 1974, employees Deemer and Cornwell filed written complaints with the Columbus Area Office, Occupational Safety and Health Administration, pursuant to Section 11(c)(2) of the Act. Upon receipt of these complaints, representatives of the Secretary of Labor caused an investigation to be made and determined that the provisions of Section 11(c) of the Act had been violated.

V

Defendant's reprimands and disciplinary suspensions issued to employees Deemer and Cornwell constituted violations of Section 11(c)(1) of the Act (29 U. S. C. § 660(c)(1)), in that they constituted discrimination against employees because of the exercise by such employees of rights afforded by the Act. A judgment restraining such violations and ordering all appropriate relief, including back pay, is expressly authorized by Section 11(c)(2) of the Act.

WHEREFORE, cause having been shown, plaintiff prays:

1. That a permanent injunction be issued, ordering defendant to compensate employees Virgil G. Deemer and Thomas A. Cornwell for the periods of the said disciplinary suspensions.
2. That an injunction be issued, ordering defendant to post in a prominent place, for 60 consecutive days, a

notice stating that it will not in any manner discriminate against employees because of engagement in activities protected by Section 11(c) of the Act, and offering to make employees Deemer and Cornwell whole for any loss of pay suffered as the result of such discrimination.

3. That defendant be ordered to expunge from its personnel files all references to such reprimands or disciplinary suspensions.

4. For such other and further relief as may be necessary and appropriate.

/s/ GREGORY B. TAYLOR
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for Plaintiff

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IN THE UNITED STATES DISTRICT COURT
For the Northern District of Ohio
Western Division

Peter J. Brennan, Secretary of Labor,
United States Department of Labor,
Plaintiff,

vs.

Whirlpool Corporation
(Marion Division),
Defendant.

Civil No. C74 359

ANSWER

Now comes the Defendant, Whirlpool Corporation (Marion Division), a corporation, and for its answer to the complaint of the Plaintiff, Peter J. Brennan, Secretary of Labor, United States Department of Labor, states as follows:

(1) Denies the allegations of Paragraph I of the Complaint.

(2) Admits the allegations in Paragraph II of the Complaint that it has a manufacturing plant in Marion, Ohio, and that it produces goods shipped in interstate commerce, and denies all other allegations of Paragraph II of the complaint.

(3) Admits the allegations in Paragraph III of the complaint that Virgil G. Deemer and Thomas A. Cornwell, employees of Defendant, refused to perform work assignments on or about July 10, 1974, and that the Defendant issued written reprimands and suspensions to the employees; it denies all other allegations of Paragraph III of the Complaint.

(4) Denies any knowledge of the allegations in Paragraph IV of the Complaint.

(5) Denies the allegations in Paragraph V of the complaint.

First Affirmative Defense

The allegations of Plaintiff's Complaint fail to state a claim or cause of action upon which relief can be granted.

Second Affirmative Defense

The allegations of Plaintiff's Complaint purport to assert a cause of action, the subject matter of which consists of alleged interference with rights arguably protected by the Occupational Safety and Health Act of 1970 29 U. S. C. A. Section 651 *et seq.*, and accordingly the Court has no jurisdiction over said subject matter of the Complaint since the matters contained therein fall within the sole and exclusive jurisdiction of the Occupational Safety and Health Review Commission under the well established doctrine of federal preemption.

WHEREFORE, Defendant, Whirlpool Corporation (Marion Division), a Corporation, denies that Plaintiff is entitled to the relief demanded or any other relief.

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IN THE UNITED STATES DISTRICT COURT
For the Northern District of Ohio
Western Division

Secretary of Labor,	}	No. C-74-359 Opinion Findings of Fact and Conclusions of Law
<i>Plaintiff,</i>		
vs.		
Whirlpool Corporation,		
<i>Defendant.</i>		

The Opinion, Findings of Fact and Conclusions of Law entered by the District Court June 21, 1976, 416 F. Supp. 30, are reprinted in Appendix C of the Petitioner for Writ of Certiorari at pp. A43-A49.

IN THE UNITED STATES COURT OF APPEALS
For the Sixth Circuit

Ray Marshall, Secretary of Labor,	}	Nos. 76-2143 and 76-2261
<i>Appellant,</i>		
vs.		
Whirlpool Corporation and Empire- Detroit Steel Div., Detroit Steel Corporation,		
<i>Appellees,</i>		
Whirlpool Corporation,	}	No. 76-2144
<i>Cross-Appellant,</i>		
vs.		
Ray Marshall, Secretary of Labor,		
<i>Cross-Appellee.</i>		

Decided and Filed February 22, 1979

Before: EDWARDS, *Chief Judge*; KEITH and MERRITT, *Circuit Judges*.

The decision for the United States Court of Appeals for the Sixth Circuit, entered February 22, 1979, is reprinted as Appendix A of the Petition for Writ of Certiorari at pp. A1-A39.

IN THE UNITED STATES COURT OF APPEALS
For the Sixth Circuit

Ray Marshall, Secretary of Labor, <i>Appellant,</i>	}	Nos. 76-2143 and 76-2261
vs.		
Whirlpool Corporation and Empire- Detroit Steel Div., Detroit Steel Corporation, <i>Appellees,</i>	}	
Whirlpool Corporation, <i>Cross-Appellant,</i>	}	No. 76-2144
vs.		
Ray Marshall, Secretary of Labor, <i>Cross-Appellee.</i>	}	

ORDER OF AMENDMENT

Before: EDWARDS, Chief Judge, KEITH and MERRITT, Circuit Judges.

This Court's opinion of February 22, 1979 is hereby amended as follows:

1. At the end of footnote 18, add "*See Baker v. U. S. Dept of the Interior, Board of Mine Operations Appeals*, _____ F.2d _____ (No. 77-1973, D. C. Circuit, decided Nov. 29, 1978)."

2. At the end of footnote 23, add "; M. Rothstein, Occupational Safety and Health Law §§ 186 et seq. (West. 1978)."

Entered by Order of the Court

/s/ JOHN P. HEHMAN

Clerk

IN THE UNITED STATES COURT OF APPEALS
For the Sixth Circuit

Ray Marshall, Secretary of Labor, <i>Appellant,</i>	}	Nos. 76-2143 and 76-2261
vs.		
Whirlpool Corporation and Empire- Detroit Steel Div., Detroit Steel Corporation, <i>Appellees,</i>	}	
Whirlpool Corporation, <i>Cross-Appellant,</i>	}	No. 76-2144
vs.		
Ray Marshall, Secretary of Labor, <i>Cross-Appellee.</i>	}	

Filed April 4, 1979

John P. Hehman, Clerk

ORDER

Before: EDWARDS, Chief Judge;

KEITH and MERRITT, Circuit Judges

The Order of the Sixth Circuit denying petitions for rehearing and rehearing *en banc* is reprinted as Appendix B to the Petition for Certiorari, pp. A40-A42.

SUPREME COURT OF THE UNITED STATES

October Term, 1978

Whirlpool Corporation,

Petitioner,

vs.

Ray Marshall, Secretary of Labor,

Respondent.

No. 78-1870

Facts and Opinion D. C., 416 F. Supp. 30; 593 F. 2d 715.

Petition for writ of certiorari to the United States Court of Appeals for the Sixth Circuit.

October 1, 1979. Granted.